IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.95 OF 2005

Dilip Bhimrao Kamble & Ors. .. Appellants

vs.

Mrs. Kallava Hari Kamble & Ors. .. Respondents.

Mr.Amit Borkar for the Appellant.

Mr.N.R.Bafna for the Respondent.

CORAM : A.S.OKA, J.

DATED : 5th April, 2005.

P.C. :

1. Heard Shri Borkar for the Appellants. The challenge is to the Judgment and Order dated 8.12.2004 passed by the learned Addl. District Judge, Kolhapur, by which order or remand has been passed. The Appeal was preferred against final decree passed in the suit for partition. While remanding the final decree application to the trial Court, the Appellate Court has directed the trial Court to appoint Court Commissioner for the purpose of effecting partition.

2. The learned Counsel appearing for the Appellants made a grievance regarding clause no.4 of the operative part of the impugned judgment with reads as follows :

> "The Southern half portion of C.S.No.648 be divided in four part, and each branch i.e. the branch of Manohar, Dhondiram, Kerba and Bhimrao be given 1/4th portion from the southern half portion."

3. By the Preliminary decree the Original Plaintiff i.e. the Respondent No.1 herein was held entitled to 1/2 portion of the area of 35-74 sq.mts on the Northern side of City Survey No.648. By clause no.4 of the impugned Judgment and order, the Appellate Court has directed the Southern half portion of the Survey No. 648 be divided into four parts amongst the contesting defendants. The direction given while passing of order of remand is in confirmity with the Preliminary decree. There is no error in the directions given while passing the order of remand. Hence the Appeal from order is dismissed with no order as to costs.

(A.S.Oka, J.)